

Professional Heating & Air Conditioning and its insurance carrier, Utah Property & Casualty Guaranty Association (referred to jointly as "Professional" hereafter), ask the Utah Labor Commission to review Administrative Law Judge Sessions' determination that L.V.E. is entitled to a preliminary finding of permanent total disability under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Mr. E. suffered a herniated C5-6 disc while working for Professional on September 15, 1999. After corrective surgery, he was left with a 30% impairment from the surgery and a 15% impairment attributable to "gait disturbance." Professional concedes it is liable for workers' compensation benefits related to Mr. E.'S work injuries, and has paid medical expenses and some disability compensation to Mr. Evans. However, Professional disputes Mr. Evan's entitlement to permanent total disability compensation.

Mr. E. filed an application with the Commission on January 30, 2004, to compel Professional to pay permanent total disability compensation. Judge Sessions held an evidentiary hearing on November 8, 2005, and then on November 17, 2005, issued his decision finding Mr. E. entitled to a preliminary finding of permanent total disability, subject to Professional's right to submit a reemployment/rehabilitation plan.

On December 15, 2005, Professional filed a motion for Commission review of Judge Sessions' decision.¹ Professional makes two arguments: 1) Pursuant to Commission's Rule 602-2-2, a medical panel must be appointed to evaluate Mr. E.'S medical and functional capabilities; and 2) Judge Sessions' tentative finding of permanent total disability is incorrect.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-413(1) establishes the criteria to be applied in determining whether an injured worker is entitled to permanent total disability compensation under the Act. Among other things, §413(1) requires consideration of medical causation, the nature and extent of impairment, and remaining medical and functional capacity. With respect to Mr. Evan's claim, the parties' respective medical experts have submitted conflicting opinions on some of the foregoing medical issues.

Section 34A-2-601 permits the Commission to utilize impartial medical panels in evaluating disputed workers' compensation claims. In its Rule 602-2-2, the Commission has identified the

¹ Mr. E. has submitted no response to Professional's arguments. Professional's motion for review was not forwarded from the Adjudication Division to the Commission until March 20, 2006.

situations calling for appointment of such a medical panel.

A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

....

4. Conflicting medical opinions related to a claim of permanent total disability,

....

In this case, the medical record shows a conflict of opinion between Dr. Moress and Dr. Christian regarding Mr. E.'S impairment and his functional and medical capacity. Resolution of these medical issues is a prerequisite to any determination of Mr. E.'S right to receive permanent total disability compensation. Consequently, Rule 602-2-2.A.4 requires appointment of a medical panel in this matter.

The Commission sets aside Judge Sessions' decision of November 17, 2005. The Commission remands this matter to Judge Sessions for referral to a medical panel and such other action as is necessary to adjudicate Mr. Evan's claim, including issuance of a new decision that takes into consideration the medical panel's report. In light of this order of remand, the Commission does not address Professional's other challenges to Judge Sessions' decision of November 17, 2005.

ORDER

The Commission grants Professional's motion for review, sets aside Judge Sessions' decision of November 17, 2005, and remands this matter to Judge Sessions for further proceedings and a new decision. It is so ordered.

Dated this 31st day of March, 2006.

R. Lee Ellertson
Utah Labor Commissioner